

§ 180.671

initial decision that involved a bona fide purchaser, encumbrancer or tenant without actual knowledge of the charge.

(iii) Assessing a civil penalty against any respondent to vindicate the public interest in accordance with § 180.671.

(4) *Findings in favor of respondents.* If the ALJ finds that the charging party has not established that a respondent has engaged in a discriminatory housing practice, the ALJ shall make an initial decision dismissing the charge as against that respondent.

(c) *Initial Decision in Non-Fair Housing Act matters.* The ALJ shall issue the initial decision as soon as possible after the end of the hearing.

(1) *Findings against Respondents.* If the ALJ finds that a respondent has failed to comply substantially with the statutory and regulatory requirements that gave rise to the notice of proposed adverse action, the ALJ shall issue an initial decision against the respondent.

(i) The initial decision shall provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the involved program or activity.

(ii) The initial decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the applicable statute and regulations, including provisions designed to assure that no Federal financial assistance will be extended for the program or activity unless and until the respondent corrects its noncompliance and satisfies the Secretary that it will fully comply with the relevant statute and regulations.

(iii) The initial decision shall state that it will become final only upon the Secretary's approval.

(2) *Findings in favor of respondents.* If the ALJ finds that a respondent has not failed to comply substantially with the statutory and regulatory requirements that gave rise to the notice of proposed adverse action, the ALJ shall make an initial decision dismissing the notice of proposed adverse action. The initial decision shall state that it will

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become the final agency decision 30 days after the date of issuance.

[61 FR 52218, Oct. 4, 1996, as amended at 64 FR 6754, Feb. 10, 1999; 68 FR 12788, Mar. 17, 2003; 72 FR 5588, Feb. 6, 2007]

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) *Amounts.* The ALJ may assess a civil penalty against any respondent under § 180.670(b)(3) for each separate and distinct discriminatory housing practice (as defined in paragraph (b) of this section) that the respondent committed, each civil penalty in an amount not to exceed:

(1) \$16,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local governmental agency, to have committed any prior discriminatory housing practice.

(2) \$37,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) \$65,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of filing of the charge.

(b) *Definition of separate and distinct discriminatory housing practice.* A separate and distinct discriminatory housing practice is a single, continuous uninterrupted transaction or occurrence that violates section 804, 805, 806 or 818 of the Fair Housing Act. Even if such a transaction or occurrence violates more than one provision of the Fair

Housing Act, violates a provision more than once, or violates the fair housing rights of more than one person, it constitutes only one separate and distinct discriminatory housing practice.

(c) *Factors for consideration by ALJ.* (1) In determining the amount of the civil penalty to be assessed against any respondent for each separate and distinct discriminatory housing practice the respondent committed, the ALJ shall consider the following six (6) factors:

(i) Whether that respondent has previously been adjudged to have committed unlawful housing discrimination;

(ii) That respondent's financial resources;

(iii) The nature and circumstances of the violation;

(iv) The degree of that respondent's culpability;

(v) The goal of deterrence; and

(vi) Other matters as justice may require.

(2)(i) Where the ALJ finds any respondent to have committed a housing-related hate act, the ALJ shall take this fact into account in favor of imposing a maximum civil penalty under the factors listed in paragraphs (c)(1)(iii), (iv), (v), and (vi) of this section.

(ii) For purposes of this section, the term *housing-related hate act* means any act that constitutes a discriminatory housing practice under section 818 of the Fair Housing Act and which constitutes or is accompanied or characterized by actual violence, assault, bodily harm, and/or harm to property; intimidation or coercion that has such elements; or the threat or commission of any action intended to assist or be a part of any such act.

(iii) Nothing in this paragraph shall be construed to require an ALJ to assess any amount less than a maximum civil penalty in a non-hate act case, where the ALJ finds that the factors listed in paragraphs (c)(1)(i) through (vi) of this section warrant the assessment of a maximum civil penalty.

(d) *Persons previously adjudged to have committed a discriminatory housing practice.* If the acts constituting the discriminatory housing practice that is the subject of the charge were committed by the same natural person who

has previously been adjudged, in any administrative proceeding or civil action, to have committed acts constituting a discriminatory housing practice, the time periods in paragraphs (a) (2) and (3) of this section do not apply.

(e) *Multiple discriminatory housing practices committed by the same respondent; multiple respondents.* (1) In a proceeding where a respondent has been determined to have engaged in, or is about to engage in, more than one separate and distinct discriminatory housing practice, a separate civil penalty may be assessed against the respondent for each separate and distinct discriminatory housing practice.

(2) In a proceeding involving two or more respondents who have been determined to have engaged in, or are about to engage in, one or more discriminatory housing practices, one or more civil penalties, as provided under this section, may be assessed against each respondent.

[64 FR 6754, Feb. 10, 1999, as amended at 68 FR 12788, Mar. 17, 2003; 72 FR 5588, Feb. 6, 2007]

§ 180.675 Petitions for review.

(a) The Secretary may affirm, modify or set aside, in whole or in part, the initial decision, or remand the initial decision for further proceedings.

(b) Any party adversely affected by the ALJ's initial decision may file a motion with the Secretary explaining how and why the initial decision should be modified, set aside, in whole or in part, or remanded for further proceedings. Such petition shall be based only on the following grounds:

(1) A finding of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law, duly promulgated rules of HUD, or legal precedent; or

(4) A prejudicial error of procedure was committed.

(c) Each issue shall be plainly and concisely stated and shall be supported by citations to the record when assignments of error are based on the record, statutes, regulations, cases, or other authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any